

COM-RPT, AJCA04 ¶11,460, Act Sec. 865. Taxable fuel refunds for certain ultimate vendors

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House Committee Report (H.R. REP. NO. 108-548, pt. 1)

[[Code Secs. 6416](#) and [6427](#)]

Present Law

The Code provides that, in the case of gasoline on which tax has been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, a wholesale distributor that sells the gasoline for such exempt purposes is treated as the person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. In the case of undyed diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, a credit or payment is allowable only to the ultimate, registered vendors ("ultimate vendors") of such fuels.

In general, refunds are paid without interest. However, in the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, the Secretary is required to pay interest on certain refunds. The Secretary must pay interest on refunds of \$200 or more (\$100 or more in the case of kerosene) due to the taxpayer arising from sales over any period of a week or more, if the Secretary does not make payment of the refund within 20 days.

Reasons for Change

The Committee observes that refund procedures for gasoline differ from those for diesel fuel and kerosene. The Committee believes that simplification of administration can be achieved for both taxpayers and the IRS by providing a more uniform refund procedure applicable to all taxed highway fuels. The Committee further believes that compliance can be increased and administration made less costly by increased use of electronic filing.

The Committee further observes that often State and local governments find it prudent to monitor and pay for fuel purchases by the use of a credit card, fleet buying card, or similar arrangement. In such a case the person extending the credit stands between the vendor of fuel and purchaser of fuel (the State or local government) in an exempt transaction, and the person extending the credit insures payment of the fuel bill thereby paying the amount of any tax owed that is embedded in the price of the fuel. In addition, because the person extending credit to the tax-exempt purchaser has a contractual relationship with the tax-exempt user, the person extending the credit should be best able to establish that the fuel should be sold at a tax-exempt price. The Committee believes that in such a situation it is appropriate to deem the person extending the credit to hold ultimate vendor status, notwithstanding that such a person is not actually a vendor of fuel. The Committee observes that the billing service provided by the person extending credit to the tax-exempt purchaser creates a "paper trail" that should facilitate compliance and aid in any necessary audits that the IRS may undertake.

Explanation of Provision

For sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, the provision conforms the payment of refunds to that procedure established under present law in the case of diesel fuel or kerosene. That is, the ultimate vendor claims for refund.

The provision modifies the payment of interest on refunds. Under the provision, in the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, all refunds unpaid after 45 days must be paid with interest. If the taxpayer has filed for his or her refund by electronic means, refunds unpaid after 20 days must be paid with interest.

Lastly, for claims for refund of tax paid on diesel fuel or kerosene sold to State and local governments or for sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed and for which the ultimate purchaser utilized a credit card, the provision deems the person extending the credit to the ultimate purchaser to be the ultimate vendor. That is, the person extending credit via a credit card administers claims for refund, and is responsible for supplying all the appropriate documentation currently required from ultimate vendors.

Conference Committee Report (H.R. CONF. REP. NO. 108-755)

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and Senate amendment, with modifications. For sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, claims for credits or refund are made by the ultimate vendor.

The conference agreement provides that the rules for vendor refunds apply to claims made under this provision, except that the rules regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are State or local governments or to a nonprofit educational organizations. [771](#)

The conference agreement does not include the House bill or Senate amendment provisions that deem the person extending credit via a credit card to the ultimate purchaser to be the ultimate vendor for purposes of refund claims.

Effective Date

The provision is effective on January 1, 2005.

[Law at [¶6205](#). CCH Explanation at [¶1511](#).]

[771](#) Sec. 6416(b)(2)(C) or (D).